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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,256	02/19/2002	David K. Ovard	MI40-341	2878

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EXAMINER

LE, LANA N

ART UNIT PAPER NUMBER

2685

DATE MAILED: 08/26/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/081,256

Applicant(s)

OVAR D ET AL.

Examiner

Lana N Le

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 24-49 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-22 and 24-43 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2,4,5,8.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see paper #3, filed 02/19/02 from continued application No. 09/265,074 with respect to independent claims 1, 10, 18, 24, and 31, Will (US 5,970,388) and the cited prior art fail to disclose the claimed invention for the reason as set forth in applicant's remarks, specifically see page 13, lines 11- page 4, line 2 and page 14, line 15 - page 15, line 2, page 17, line 10-15, page 19, lines 5-12, page 20, line 7- 13, page 20, line 21- page 21, line 3 have been fully considered and are persuasive. Also, applicant's arguments filed 06/01/04, paper #9, Mahany et al (US 5,657,317) and the cited prior art fail to disclose the claimed invention for the reason as set forth in applicant's remarks, specifically see page 15, lines 1-19, page 18, lines 4-8, page 18, line 15 – page 19, line 7 and page 19, line 19 –page 20, line 7 have been fully considered and are persuasive.

The office action regarding U.S.C 112, U.S.C 102 and U.S.C 103 of paper #7, filed 02-26-04 has been withdrawn. However, no terminal disclaimer has been filed and therefore the double patenting rejection stands as set forth in the previous office action.

Applicant's arguments with respect to claims 42-43 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 42-43 rejected under 35 U.S.C. 103(a) as being unpatentable over MacLellan et al (US 5,649,296).

Regarding claim 42, MacLellan et al disclose an interrogator 103 (fig. 1) comprising:

a communication station (207, 208, 210, 213, 200 connected to antenna 206) configured to output a return link communication signal (signal at 200),

wherein the communication station comprise a low noise amplifier 207 (fig. 2) configured to inherently increase the power of a respective one of the communication signals;

a coaxial cable (line cable from 103 to 102) coupled with the respective communication station (207, 208, 210, 213, 200) and configured to communicate a respective return link communication signal of the respective communication station (to LAN 102 via the coaxial cable).

MacLellan et al don't disclose: a plurality of communication stations outputting a plurality of communication signals. However, it is well known in the art to have a plurality of communication stations. It would have been obvious to one of ordinary skill in the art at

the time the invention was made to include a plurality of communication stations in the interrogator of MacLellan in order to have simultaneous reception and transmission via a plurality of diversity antennae from different remote devices at the same time for faster service.

Regarding claim 43, MacLellan et al further disclose the interrogator of claim 42 wherein each of the communication station is individually configured to output a forward link wireless signal from transmitter and antenna 203&204 (fig. 2) to TAG 105 (fig. 1); and receive a return link wireless signal from TAG 105 responsive to the outputting of the forward link wireless signal to implement radio frequency identification device communications (wherein the TAG communicates identification data responsive to the forward link wireless signal; see RF links of fig. 1).

Double Patenting

Claims 18-22, 31-44 is rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. 6,336,764 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: see claim 1 of US 6,336,764.

Claims 1-17, 24-30, 45-46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,336,764. Although the conflicting claims are not identical, they are not patentably

Art Unit: 2685

distinct from each other because the plurality of communication stations is obvious to one of ordinary skill in the art as to considering each one of the communication stations at a time and newly cited claims 45-49 is obvious due to claim 1 of U.S. Patent No. 6,336,764 generating the return link communication signal corresponding to the return link wireless signal and therefore the data generated should be similar to the data in the return link wireless signal.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lana Le whose telephone number is (703) 308-5836. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (703) 305-4385. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2685

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lana Le

August 22, 2004